

SENATE BILL 411

E2
SB 783/10 – JPR

11r0485
CF HB 1316

By: **Senators Raskin and Forehand**
Introduced and read first time: February 4, 2011
Assigned to: Judicial Proceedings

Committee Report: Favorable
Senate action: Adopted
Read second time: March 9, 2011

CHAPTER _____

1 AN ACT concerning

2 **Financial Crimes – Seizure and Forfeiture of Property**

3 FOR the purpose of establishing seizure and forfeiture procedures for property
4 obtained through or used in connection with certain financial crimes;
5 establishing conditions that would exclude certain property from forfeiture;
6 establishing how certain property subject to forfeiture may be seized, with
7 certain exceptions; establishing circumstances that must be considered when
8 determining whether to seize certain property; establishing a certain deadline
9 for filing a complaint seeking forfeiture; providing for the contents and
10 distribution of a certain complaint; providing for the forfeiture of interest in
11 certain real property; providing for a stay of forfeiture of a certain family
12 residence under certain circumstances; establishing a certain rebuttable
13 presumption; providing for certain posthearing orders; providing for the
14 application of proceeds from a certain sale of forfeited property; defining certain
15 terms; providing for the application of this Act; providing for the effective date
16 of this Act; and generally relating to seizure and forfeiture of property used in
17 connection with violation of the Financial Crimes law.

18 BY repealing and reenacting, without amendments,
19 Article – Criminal Procedure
20 Section 12–101(c), (f), (g), (i), (k), and (o), 12–202, 12–203, 12–208 through
21 12–211, 12–301 through 12–308, 12–402, and 12–403
22 Annotated Code of Maryland
23 (2008 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
2 Article – Criminal Procedure
3 Section 13–501 through 13–509 to be under the new subtitle “Subtitle 5.
4 Violations of Financial Crimes Law”
5 Annotated Code of Maryland
6 (2008 Replacement Volume and 2010 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article – Criminal Procedure**

10 12–101.

11 (c) “Controlled Dangerous Substances law” means Title 5 of the Criminal
12 Law Article.

13 (f) “Forfeiting authority” means:

14 (1) the unit or person designated by agreement between the State’s
15 Attorney for a county and the chief executive officer of the governing body having
16 jurisdiction over assets subject to forfeiture to act on behalf of the governing body
17 regarding those assets; or

18 (2) if the seizing authority is a unit of the State, a unit or person that
19 the Attorney General or the Attorney General’s designee designates by agreement
20 with a State’s Attorney, county attorney, or municipal attorney to act on behalf of the
21 State regarding assets subject to forfeiture by the State.

22 (g) “Governing body” includes:

23 (1) the State, if the seizing authority is a unit of the State;

24 (2) a county, if the seizing authority is a unit of a county;

25 (3) a municipal corporation, if the seizing authority is a unit of a
26 municipality; and

27 (4) Baltimore City, if the seizing authority is the Police Department of
28 Baltimore City.

29 (i) “Lienholder” means a person who has a lien or a secured interest on
30 property created before the seizure.

31 (k) (1) “Owner” means a person having a legal, equitable, or possessory
32 interest in property.

- 1 (2) “Owner” includes:
- 2 (i) a co-owner;
- 3 (ii) a life tenant;
- 4 (iii) a remainderman to a life tenancy in real property;
- 5 (iv) a holder of an inchoate interest in real property; and
- 6 (v) a bona fide purchaser for value.

7 (o) “Seizing authority” means a law enforcement unit in the State that is
8 authorized to investigate violations of the Controlled Dangerous Substances law and
9 that has seized property under this title.

10 12-202.

11 (a) Property subject to forfeiture under this title may be seized:

12 (1) on a warrant issued by a court that has jurisdiction over the
13 property; and

14 (2) without a warrant when:

15 (i) the seizure is incident to an arrest or a search under a
16 search warrant;

17 (ii) the seizure is incident to an inspection under an
18 administrative inspection warrant;

19 (iii) the property subject to seizure has been the subject of a
20 prior judgment in favor of the State in a criminal injunction or forfeiture proceeding
21 under this title;

22 (iv) there is probable cause to believe that the property is
23 directly or indirectly dangerous to health or safety; or

24 (v) there is probable cause to believe that the property has been
25 used or is intended to be used in violation of the Controlled Dangerous Substances law
26 or this title.

27 (b) The seizing authority that seizes money that is contraband shall
28 immediately:

29 (1) photograph the contraband money and record the quantity of each
30 denomination of coin or currency seized; and

1 (2) deposit the money to the account of the appropriate local financial
2 authority.

3 (c) A photograph taken under subsection (b) of this section may be
4 substituted for money as evidence in a criminal or forfeiture proceeding.

5 12–203.

6 (a) Property seized under this title:

7 (1) is not repleviable; but

8 (2) is in the custody of the seizing authority, subject only to the orders,
9 judgments, and decrees of the court or the official having jurisdiction over the
10 property.

11 (b) A seizing authority may place seized property under seal and remove the
12 property to a place designated by the court.

13 12–208.

14 (a) (1) Except as provided in §§ 12–209 and 12–210 of this subtitle, an
15 owner of seized property who wishes to obtain possession of the property, to convey an
16 interest in real property, or to remove a building or fixture from real property shall
17 notify the clerk of the proper court.

18 (2) If forfeiture proceedings have begun, the proper court is the court
19 where the proceedings have begun.

20 (3) If criminal proceedings have begun but forfeiture proceedings have
21 not begun, the proper court is the court where the criminal proceedings have begun.

22 (4) If neither forfeiture nor criminal proceedings have begun, the
23 proper court is the circuit court for the county where the property was seized.

24 (b) (1) Unless the forfeiting authority and the owner agree to a bond in
25 another amount, if a motor vehicle is not needed for evidentiary purposes in a judicial
26 proceeding:

27 (i) the court shall appraise the value of the motor vehicle on the
28 basis of the average value of the motor vehicle set forth in the National Automobile
29 Dealer’s Association official used car guide; or

30 (ii) if the owner shows that a lien is on the motor vehicle and
31 the owner agrees to make the required payments to the lienholder, the court shall
32 require a bond in an amount of the average value of the motor vehicle set forth in the

1 National Automobile Dealer's Association official used car guide, less the amount owed
2 on the lien.

3 (2) For a motor vehicle, the court shall appraise the value in the
4 manner provided in this subsection and provide the appraisal in writing to the clerk of
5 the court.

6 (c) (1) If property other than a motor vehicle is not needed for evidentiary
7 purposes in a judicial proceeding, the clerk shall obtain an independent appraisal of
8 the value of the property.

9 (2) The sheriff or other person responsible for an appraisal under this
10 subsection shall promptly:

11 (i) inspect and appraise the value of the property; and

12 (ii) return the appraisal in writing under oath to the clerk of the
13 court.

14 (d) Notice of the appraisal shall be sent to all lienholders shown in the
15 records required by law for notice or the perfection of the lien.

16 (e) (1) On the filing of an appraisal, the owner may give bond payable to
17 the clerk of the court in an amount equal to the greater of:

18 (i) the appraised value of the property plus any accrued costs;
19 or

20 (ii) the aggregate amount of the liens on the property that are
21 shown in the records required by law for the notice or perfection of liens.

22 (2) A person may give a bond under this section by cash, through a
23 surety, through a lien on real property, or by other means that the clerk approves.

24 (3) A bond authorized under this section:

25 (i) shall be conditioned for performance on final judgment by
26 the court;

27 (ii) shall be filed in the District Court or circuit court where the
28 criminal action that gave rise to the seizure is pending; and

29 (iii) unless a complaint for forfeiture has been filed, shall be part
30 of the same criminal proceeding.

1 (4) If a criminal action is not pending or a forfeiture complaint has not
2 been filed, the bond shall be filed in the circuit court or District Court where the
3 property was seized.

4 (f) (1) If the court orders that property or an interest or equity in the
5 property or proceeds be forfeited under this title, the court shall enter judgment in the
6 amount of the bond against the obligors on the bond without further proceedings.

7 (2) Payment of the amount of the bond shall be applied as provided
8 under § 12-402(d)(2) of this title.

9 12-209.

10 Seizure of real property occurs on the earlier of the filing:

11 (1) of a complaint for forfeiture under this title; or

12 (2) of a notice of pending litigation in the circuit court of the county
13 where the real property is located.

14 12-210.

15 (a) Subject to the rights of a lienholder to sell the real property, an owner or
16 owner's tenant may remain in possession of seized real property until forfeiture is
17 ordered.

18 (b) The forfeiting authority may apply to the court for the appointment of a
19 receiver to apply income from income-producing property.

20 (c) If a person who is an owner or owner's tenant remains in possession of
21 the real property and the person's interest in the real property is forfeited, the person
22 shall immediately surrender the real property to the seizing authority in substantially
23 the same condition as when seized.

24 12-211.

25 (a) This section does not apply if:

26 (1) an act is agreed to by a forfeiting authority or is ordered by the
27 court; or

28 (2) an owner posts a bond under § 12-208 of this subtitle.

29 (b) Subject to subsection (a) of this section, until the court enters judgment
30 in favor of the owner, an owner may not attempt:

31 (1) to convey or encumber an interest in seized real property; or

1 (2) to remove a building or fixture on seized real property.

2 12-301.

3 Except as provided in § 12-304(c) of this subtitle, if property is seized under §
4 12-202(a)(2)(iv) and (v) of this title because there is probable cause to believe that the
5 property is directly or indirectly dangerous to health or safety and that the property
6 was or will be used to violate this title, forfeiture proceedings under this subtitle shall
7 be filed promptly.

8 12-302.

9 (a) To apply for the forfeiture of money, the appropriate local financial
10 authority or the Attorney General shall file a complaint and affidavit in the District
11 Court or the circuit court for the county in which the money was seized.

12 (b) The complaint and affidavit shall be served in accordance with the
13 Maryland Rules of Procedure.

14 12-303.

15 Except as provided in § 12-302 of this subtitle and § 4-401(9) of the Courts
16 Article, the appropriate forfeiting authority shall file proceedings under this title in
17 the circuit court.

18 12-304.

19 (a) Except as provided under subsections (b) and (c) of this section, a
20 complaint seeking forfeiture shall be filed within the earlier of:

21 (1) 90 days after the seizure; or

22 (2) 1 year after the final disposition of the criminal charge for the
23 violation giving rise to the forfeiture.

24 (b) A complaint for the forfeiture of a motor vehicle shall be filed within 45
25 days after the motor vehicle is seized.

26 (c) (1) A proceeding about money shall be filed within 90 days after the
27 final disposition of criminal proceedings that arise out of the Controlled Dangerous
28 Substances law.

29 (2) If the State or a political subdivision does not file proceedings
30 about money within the 90-day period, the money seized under this title shall be
31 returned to the owner on request by the owner.

1 (3) If the owner fails to ask the return of the money within 1 year after
2 the final disposition of criminal proceedings, as provided under § 12–403 of this title,
3 the money shall revert to:

4 (i) the political subdivision in which the money was seized; or

5 (ii) the State, if the money was seized by State authorities.

6 12–305.

7 (a) A complaint seeking forfeiture shall contain:

8 (1) a description of the property seized;

9 (2) the date and place of the seizure;

10 (3) the name of the owner, if known;

11 (4) the name of the person in possession, if known;

12 (5) the name of each lienholder, if known or reasonably subject to
13 discovery;

14 (6) an allegation that the property is subject to forfeiture;

15 (7) if the forfeiting authority seeks to forfeit a lienholder’s interest in
16 property, an allegation that the lien was created with actual knowledge that the
17 property was being or was to be used in violation of the Controlled Dangerous
18 Substances law;

19 (8) a statement of the facts and circumstances surrounding the
20 seizure;

21 (9) a statement setting forth the specific grounds for forfeiture; and

22 (10) an oath or affirmation by the forfeiting authority that the contents
23 of the complaint are true to the best of the forfeiting authority’s knowledge,
24 information, and belief.

25 (b) Within 20 days after the filing of the complaint, copies of the summons
26 and complaint shall be sent by certified mail requesting “restricted delivery – show to
27 whom, date, address of delivery” and first-class mail to all known owners and
28 lienholders whose identities are reasonably subject to discovery, including all real
29 property owners and lienholders shown in the records required by law for notice or
30 perfection of the lien.

31 12–306.

1 (a) A notice shall be signed by the clerk and shall:

2 (1) include the caption of the case;

3 (2) describe the substance of the complaint and the relief sought;

4 (3) state the latest date on which a response may be filed;

5 (4) state that the property shall be forfeited if a response is not filed
6 on time;

7 (5) state that the owner of the property may have possession of the
8 property pending forfeiture by posting a bond as provided in § 12-208 of this title; and

9 (6) tell where to file a response and whom to contact for more
10 information concerning the forfeiture.

11 (b) Within 20 days after the filing of the complaint, the notice shall be:

12 (1) posted by the sheriff on the door of the courthouse where the action
13 is pending or on a bulletin board within the immediate vicinity of the door;

14 (2) posted by the sheriff in a conspicuous place on the land, if
15 forfeiture of real property is sought; and

16 (3) published at least once a week in each of 3 successive weeks in a
17 newspaper of general circulation published in the county in which the action is
18 pending, unless the property is a boat or motor vehicle.

19 12-307.

20 The answer to a complaint shall:

21 (1) comply with the Maryland Rules;

22 (2) state the nature and extent of the person's right in, title to, or
23 interest in the property;

24 (3) state how and when the person acquired a right in, title to, or
25 interest in the property; and

26 (4) contain a request for relief and a request for a prompt hearing.

27 12-308.

1 (a) If an answer has been filed on time, the court shall set a hearing on the
2 forfeiture claim within 60 days after the later of:

3 (1) posting of notice under § 12–306(b)(1) or (2) of this subtitle; or

4 (2) final publication of notice under § 12–306(b)(3) of this subtitle.

5 (b) Without a hearing, the court may order forfeiture of the property interest
6 of a person who fails to timely file an answer.

7 12–402.

8 (a) After a full hearing, if the court determines that the property should not
9 be forfeited, the court shall order that the property be released.

10 (b) Subject to § 12–403(b) of this subtitle, if the court determines that the
11 property should be forfeited, the court shall order that the property be forfeited to the
12 appropriate governing body.

13 (c) If the court determines that the forfeited property is subject to a valid
14 lien created without actual knowledge of the lienholder that the property was being or
15 was to be used in violation of the Controlled Dangerous Substances law, the court
16 shall order that the property be released within 5 days to the first priority lienholder.

17 (d) (1) The lienholder shall sell the property in a commercially reasonable
18 manner.

19 (2) The proceeds of the sale shall be applied as follows:

20 (i) to the court costs of the forfeiture proceeding;

21 (ii) to the balance due the lienholder, including all reasonable
22 costs incident to the sale;

23 (iii) to payment of all other expenses of the proceedings for
24 forfeiture, including expenses of seizure or maintenance of custody; and

25 (iv) except as provided in § 12–403(b) of this subtitle, to the
26 General Fund of the State or of the political subdivision that seized the property.

27 12–403.

28 (a) (1) Whenever property is forfeited under this title, the governing body
29 where the property was seized may:

30 (i) keep the property for official use;

1 (ii) require an appropriate unit to take custody of the property
2 and destroy or otherwise dispose of it; or

3 (iii) sell the property if:

4 1. the law does not require the property to be destroyed;
5 and

6 2. the property is not harmful to the public.

7 (2) The proceeds of a sale under this subsection shall first be used to
8 pay all proper expenses of the proceedings for forfeiture and sale, including expenses
9 of seizure, maintenance of custody, advertising, and court costs.

10 (b) If the seizing authority was a State law enforcement unit:

11 (1) under § 12-402(b) of this subtitle, the court shall order the
12 property to be forfeited to the State law enforcement unit; or

13 (2) under § 12-402(d)(2)(iv) of this subtitle, the proceeds of the sale
14 shall be paid to the State law enforcement unit.

15 (c) Except as provided in subsection (d) of this section, the State law
16 enforcement unit that receives forfeited property or proceeds from a sale of forfeited
17 property under this section shall:

18 (1) dispose of the forfeited property as provided in subsection (a) of
19 this section; and

20 (2) pay to the General Fund of the State any proceeds of the sale of the
21 forfeited property.

22 (d) Except as otherwise provided under federal law, a law enforcement unit
23 other than a State law enforcement unit that participated with a State law
24 enforcement unit in seizing property forfeited under this section:

25 (1) shall be paid by the State law enforcement unit the share of the
26 proceeds from the sale of the forfeited property as agreed by the law enforcement
27 units; or

28 (2) may ask the Governor's Office of Crime Control and Prevention to
29 determine its share.

30 (e) Proceeds that a law enforcement unit other than a State law enforcement
31 unit receives under subsection (d) of this section shall be deposited in the general fund
32 of the political subdivision of that law enforcement unit.

1 **SUBTITLE 5. VIOLATIONS OF FINANCIAL CRIMES LAW.**

2 **13-501.**

3 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
4 **INDICATED.**

5 **(B) “FINANCIAL CRIMES LAW” MEANS TITLE 7 AND TITLE 8 OF THE**
6 **CRIMINAL LAW ARTICLE AND TITLE 11, SUBTITLE 3 OF THE CORPORATIONS**
7 **AND ASSOCIATIONS ARTICLE.**

8 **(C) “FORFEITING AUTHORITY” HAS THE MEANING STATED IN § 12-101**
9 **OF THIS ARTICLE.**

10 **(D) “GOVERNING BODY” HAS THE MEANING STATED IN § 12-101 OF**
11 **THIS ARTICLE.**

12 **(E) “LIENHOLDER” HAS THE MEANING STATED IN § 12-101 OF THIS**
13 **ARTICLE.**

14 **(F) “OWNER” HAS THE MEANING STATED IN § 12-101 OF THIS ARTICLE.**

15 **(G) “PROCEEDS” INCLUDES PROPERTY DERIVED DIRECTLY OR**
16 **INDIRECTLY IN CONNECTION WITH OR AS A RESULT OF A VIOLATION OF THE**
17 **FINANCIAL CRIMES LAW.**

18 **(H) (1) “PROPERTY” INCLUDES:**

19 **(I) REAL PROPERTY AND ANYTHING GROWING ON OR**
20 **ATTACHED TO REAL PROPERTY;**

21 **(II) VEHICLES AND CONVEYANCES OF ANY TYPE; AND**

22 **(III) MONEY.**

23 **(2) “PROPERTY” DOES NOT INCLUDE:**

24 **(I) AN ITEM UNLAWFULLY IN THE POSSESSION OF A**
25 **PERSON OTHER THAN THE OWNER WHEN USED IN CONNECTION WITH A**
26 **VIOLATION OF THE FINANCIAL CRIMES LAW; OR**

27 **(II) A LESSOR’S INTEREST IN PROPERTY SUBJECT TO A**
28 **BONA FIDE LEASE UNLESS THE FORFEITING AUTHORITY CAN SHOW THAT THE**
29 **LESSOR PARTICIPATED IN A VIOLATION OF THE FINANCIAL CRIMES LAW OR**

1 THAT THE PROPERTY WAS THE PROCEEDS OF A VIOLATION OF THE FINANCIAL
2 CRIMES LAW.

3 (I) "SEIZING AUTHORITY" HAS THE MEANING STATED IN § 12-101 OF
4 THIS ARTICLE.

5 13-502.

6 THE FOLLOWING PROPERTY IS SUBJECT TO SEIZURE OR FORFEITURE
7 UNDER THIS SUBTITLE:

8 (1) PROPERTY OBTAINED BY OR THROUGH OR DERIVED
9 DIRECTLY OR INDIRECTLY FROM A VIOLATION OF THE FINANCIAL CRIMES LAW;

10 (2) PROPERTY RECEIVED AS AN INDUCEMENT TO VIOLATE THE
11 FINANCIAL CRIMES LAW;

12 (3) PROPERTY USED OR INTENDED TO BE USED TO COMMIT OR TO
13 FACILITATE THE COMMISSION OF A VIOLATION OF THE FINANCIAL CRIMES
14 LAW; AND

15 (4) PROCEEDS FROM PROPERTY DESCRIBED IN THIS SECTION.

16 13-503.

17 (A) PROPERTY OR AN INTEREST IN PROPERTY MAY NOT BE FORFEITED
18 IF THE OWNER ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT
19 THE VIOLATION OF THE FINANCIAL CRIMES LAW WAS COMMITTED WITHOUT
20 THE ACTUAL KNOWLEDGE OF THE OWNER.

21 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
22 SUBSECTION, REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE
23 MAY NOT BE FORFEITED UNDER THIS SUBTITLE UNLESS ONE OF THE OWNERS
24 OF THE REAL PROPERTY WAS CONVICTED OF A VIOLATION OF THE FINANCIAL
25 CRIMES LAW.

26 (2) A COURT MAY ORDER A FORFEITURE OF REAL PROPERTY
27 USED AS THE PRINCIPAL FAMILY RESIDENCE WITHOUT A CONVICTION IF THE
28 OWNER OF THE FAMILY RESIDENCE:

29 (I) FAILS TO APPEAR FOR A REQUIRED COURT
30 APPEARANCE; AND

31 (II) FAILS TO SURRENDER TO THE JURISDICTION OF THE
32 COURT WITHIN 180 DAYS AFTER THE REQUIRED COURT APPEARANCE.

1 **(C) REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE BY A**
2 **HUSBAND AND WIFE AND HELD BY THE HUSBAND AND WIFE AS TENANTS BY THE**
3 **ENTIRETY MAY NOT BE FORFEITED UNLESS:**

4 **(1) THE PROPERTY WAS USED IN CONNECTION WITH A VIOLATION**
5 **OF THE FINANCIAL CRIMES LAW OR AN ATTEMPT OR CONSPIRACY TO VIOLATE**
6 **THE FINANCIAL CRIMES LAW; AND**

7 **(2) BOTH THE HUSBAND AND WIFE ARE CONVICTED OF A**
8 **VIOLATION OF THE FINANCIAL CRIMES LAW OR OF AN ATTEMPT OR**
9 **CONSPIRACY TO VIOLATE THE FINANCIAL CRIMES LAW.**

10 **13-504.**

11 **(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS**
12 **SECTION, SEIZURE OF PROPERTY UNDER THIS SUBTITLE SHALL BE SUBJECT TO**
13 **THE PROCEDURES SET FORTH IN §§ 12-202, 12-203, AND 12-208 THROUGH**
14 **12-211 OF THIS ARTICLE.**

15 **(B) FOR THE PURPOSES OF THIS SUBTITLE, THE PROBABLE CAUSE**
16 **DESCRIBED IN § 12-202(A)(2)(V) OF THIS ARTICLE IS PROBABLE CAUSE TO**
17 **BELIEVE THAT THE PROPERTY HAS BEEN USED OR IS INTENDED TO BE USED IN**
18 **VIOLATION OF THE FINANCIAL CRIMES LAW.**

19 **(C) PAYMENT OF THE AMOUNT OF THE BOND UNDER § 12-208(F)(2) OF**
20 **THIS ARTICLE SHALL BE APPLIED AS PROVIDED UNDER § 13-508(E) OF THIS**
21 **SUBTITLE.**

22 **13-505.**

23 **(A) THE CHIEF LAW ENFORCEMENT OFFICER OF THE SEIZING**
24 **AUTHORITY THAT SEIZES A MOTOR VEHICLE USED IN VIOLATION OF THIS**
25 **SUBTITLE SHALL RECOMMEND TO THE APPROPRIATE FORFEITING AUTHORITY**
26 **IN WRITING THAT THE MOTOR VEHICLE BE FORFEITED ONLY IF THE OFFICER:**

27 **(1) DETERMINES FROM THE RECORDS OF THE MOTOR VEHICLE**
28 **ADMINISTRATION THE NAMES AND ADDRESSES OF ALL REGISTERED OWNERS**
29 **AND SECURED PARTIES AS DEFINED IN THE CODE;**

30 **(2) PERSONALLY REVIEWS THE FACTS AND CIRCUMSTANCES OF**
31 **THE SEIZURE; AND**

32 **(3) PERSONALLY DETERMINES, CONSIDERING THE**
33 **CIRCUMSTANCES LISTED IN SUBSECTION (B) OF THIS SECTION, AND**

1 REPRESENTS IN WRITING THAT THE TOTAL CIRCUMSTANCES OF THE CASE
2 DICTATE THAT SEIZURE AND FORFEITURE ARE JUSTIFIED.

3 (B) CIRCUMSTANCES TO BE CONSIDERED IN DECIDING WHETHER
4 SEIZURE AND FORFEITURE ARE JUSTIFIED INCLUDE:

5 (1) AN EXTENSIVE CRIMINAL RECORD OF THE VIOLATOR;

6 (2) A PREVIOUS CONVICTION OF THE VIOLATOR UNDER THE
7 FINANCIAL CRIMES LAW;

8 (3) EVIDENCE THAT THE MOTOR VEHICLE WAS ACQUIRED BY USE
9 OF PROCEEDS FROM A TRANSACTION INVOLVING A VIOLATION OF THE
10 FINANCIAL CRIMES LAW;

11 (4) CIRCUMSTANCES OF THE ARREST; AND

12 (5) THE WAY IN WHICH THE MOTOR VEHICLE WAS USED.

13 (C) (1) A SWORN AFFIDAVIT BY THE CHIEF LAW ENFORCEMENT
14 OFFICER THAT THE OFFICER FOLLOWED THE REQUIREMENTS OF THIS SECTION
15 IS ADMISSIBLE IN EVIDENCE IN A PROCEEDING UNDER THIS SUBTITLE.

16 (2) THE CHIEF LAW ENFORCEMENT OFFICER MAY NOT BE
17 SUBPOENAED OR COMPELLED TO APPEAR AND TESTIFY IF ANOTHER LAW
18 ENFORCEMENT OFFICER WITH PERSONAL KNOWLEDGE OF THE FACTS AND
19 CIRCUMSTANCES SURROUNDING THE SEIZURE AND THE RECOMMENDATION OF
20 FORFEITURE APPEARS AND TESTIFIES AT THE PROCEEDING.

21 (D) THE FORFEITING AUTHORITY SHALL SURRENDER THE MOTOR
22 VEHICLE ON REQUEST TO THE OWNER IF THE FORFEITING AUTHORITY
23 DETERMINES, INDEPENDENT OF THE DECISION OF THE SEIZING AUTHORITY,
24 THAT THE SEIZURE AND FORFEITURE ARE NOT JUSTIFIED BASED ON THE
25 CIRCUMSTANCES LISTED IN SUBSECTION (B) OF THIS SECTION.

26 (E) IN A PROCEEDING UNDER THIS SUBTITLE, THE COURT MAY
27 DETERMINE, BASED ON THE CIRCUMSTANCES LISTED IN SUBSECTION (B) OF
28 THIS SECTION, WHETHER THE SEIZING AUTHORITY OR FORFEITING AUTHORITY
29 ABUSED DISCRETION OR WAS CLEARLY ERRONEOUS:

30 (1) IN RECOMMENDING THE FORFEITURE OF A MOTOR VEHICLE;
31 OR

32 (2) IN NOT SURRENDERING ON REQUEST A MOTOR VEHICLE TO
33 AN OWNER.

1 **13-506.**

2 (A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS
3 SECTION, FORFEITURE OF PROPERTY UNDER THIS SUBTITLE SHALL BE
4 SUBJECT TO THE PROCEDURES SET FORTH IN §§ 12-301 THROUGH 12-308 OF
5 THIS ARTICLE.

6 (B) FOR CRIMINAL PROCEEDINGS THAT ARISE OUT OF THE FINANCIAL
7 CRIMES LAW:

8 (1) A COMPLAINT SEEKING FORFEITURE SHALL BE FILED WITHIN
9 90 DAYS AFTER THE EARLIER OF:

10 (I) CONVICTION OF THE CRIMINAL CHARGE WHICH LED TO
11 THE INITIATION OF THE FORFEITURE PROCEEDINGS; OR

12 (II) FINAL DISPOSITION OF THE CRIMINAL CHARGE GIVING
13 RISE TO THE FORFEITURE PROCEEDINGS;

14 (2) IF THE STATE OR POLITICAL SUBDIVISION DOES NOT FILE
15 PROCEEDINGS ABOUT MONEY WITHIN THE 90-DAY PERIOD, THE MONEY SEIZED
16 UNDER THIS SUBTITLE SHALL BE RETURNED TO THE OWNER ON REQUEST BY
17 THE OWNER; AND

18 (3) IF THE OWNER FAILS TO ASK FOR THE RETURN OF THE MONEY
19 WITHIN 1 YEAR AFTER THE FINAL DISPOSITION OF CRIMINAL PROCEEDINGS,
20 THE MONEY SHALL BE DISTRIBUTED AS PROVIDED UNDER § 13-508(E) OF THIS
21 SUBTITLE.

22 (C) THE ALLEGATION REQUIRED BY § 12-305(A)(7) OF THIS ARTICLE
23 SHALL REFER TO THE FINANCIAL CRIMES LAW RATHER THAN THE
24 CONTROLLED DANGEROUS SUBSTANCES LAW.

25 **13-507.**

26 (A) EXCEPT AS PROVIDED IN THIS SECTION AND IN § 13-503(C) OF THIS
27 SUBTITLE, AN OWNER'S INTEREST IN REAL PROPERTY MAY BE FORFEITED IF
28 THE REAL PROPERTY WAS USED IN CONNECTION WITH A VIOLATION OF THE
29 FINANCIAL CRIMES LAW.

30 (B) FORFEITURE PROCEEDINGS FOR REAL PROPERTY MAY BE
31 BROUGHT IN THE JURISDICTION IN WHICH:

32 (1) THE CRIMINAL CHARGES ARE PENDING;

1 **(2) THE OWNER RESIDES; OR**

2 **(3) THE REAL PROPERTY IS LOCATED.**

3 **(C) (1) IF FORFEITURE PROCEEDINGS FOR REAL PROPERTY ARE**
4 **BROUGHT IN A JURISDICTION OTHER THAN THAT IN WHICH THE REAL**
5 **PROPERTY IS LOCATED, A NOTICE OF PENDING LITIGATION SHALL BE FILED IN**
6 **THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED.**

7 **(2) A NOTICE OF PENDING LITIGATION REQUIRED UNDER THIS**
8 **SUBSECTION SHALL INCLUDE AT LEAST:**

9 **(I) THE NAME AND ADDRESS OF THE OWNER OF THE REAL**
10 **PROPERTY;**

11 **(II) A DESCRIPTION OF THE REAL PROPERTY; AND**

12 **(III) A DESCRIPTION OF THE REASONS FOR THE FILING OF**
13 **THE FORFEITURE PROCEEDINGS AND NOTICE OF PENDING LITIGATION.**

14 **(D) IF AN OWNER OF REAL PROPERTY USED AS THE PRINCIPAL FAMILY**
15 **RESIDENCE IS CONVICTED UNDER THE FINANCIAL CRIMES LAW AND THE**
16 **OWNER FILES AN APPEAL OF THE CONVICTION, THE COURT SHALL STAY**
17 **FORFEITURE PROCEEDINGS UNDER SUBSECTION (F) OF THIS SECTION OR**
18 **UNDER § 13-503(C) OF THIS SUBTITLE AGAINST THE REAL PROPERTY DURING**
19 **THE PENDENCY OF THE APPEAL.**

20 **(E) (1) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,**
21 **THERE IS A REBUTTABLE PRESUMPTION THAT PROPERTY OR PART OF A**
22 **PROPERTY IN WHICH A PERSON HAS AN OWNERSHIP INTEREST IS SUBJECT TO**
23 **FORFEITURE AS PROCEEDS IF THE STATE ESTABLISHES BY CLEAR AND**
24 **CONVINCING EVIDENCE THAT:**

25 **(I) THE PERSON HAS VIOLATED THE FINANCIAL CRIMES**
26 **LAW;**

27 **(II) THE PROPERTY WAS ACQUIRED BY THE PERSON DURING**
28 **THE VIOLATION OR WITHIN A REASONABLE TIME AFTER THE VIOLATION; AND**

29 **(III) THERE WAS NO OTHER LIKELY SOURCE FOR THE**
30 **PROPERTY.**

31 **(2) A CLAIMANT OF THE PROPERTY HAS THE BURDEN OF PROOF**
32 **TO REBUT THE PRESUMPTION IN PARAGRAPH (1) OF THIS SUBSECTION.**

1 **(F) REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE MAY**
2 **NOT BE FORFEITED UNDER THIS SECTION UNLESS:**

3 **(1) AN OWNER OF THE REAL PROPERTY WAS CONVICTED UNDER**
4 **THE FINANCIAL CRIMES LAW; OR**

5 **(2) THE REAL PROPERTY IS COVERED BY § 13-503(B)(2) OF THIS**
6 **SUBTITLE.**

7 **13-508.**

8 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
9 **MEANINGS INDICATED.**

10 **(2) “IDENTIFIABLE LOSSES RESULTING FROM THE OFFENSE”**
11 **INCLUDES:**

12 **(I) EXPENSES NECESSARY TO CANCEL, STOP PAYMENT ON,**
13 **OR REPLACE STOLEN ITEMS SUCH AS CREDIT CARDS, CHECKS, DRIVERS’**
14 **LICENSES, AND OTHER DOCUMENTS;**

15 **(II) COSTS INCURRED IN DISCOVERING THE EXTENT OF THE**
16 **VIOLATION OF THE FINANCIAL CRIMES LAW, REPAIRING DAMAGE FROM THE**
17 **VIOLATION SUCH AS DAMAGE TO CREDIT RATINGS AND REPORTS, AND**
18 **PREVENTING FURTHER DAMAGES FROM THE VIOLATION;**

19 **(III) LONG-DISTANCE TELEPHONE CHARGES TO LAW**
20 **ENFORCEMENT OFFICIALS, GOVERNMENT OFFICES, AND BUSINESSES IN**
21 **REGARD TO THE FRAUD; AND**

22 **(IV) LOST WAGES FROM THE TIME AWAY FROM WORK**
23 **REQUIRED TO OBTAIN NEW PERSONAL IDENTIFYING INFORMATION.**

24 **(3) “VICTIM” INCLUDES A BUSINESS THAT LOSES MONEY,**
25 **MERCHANDISE, OR OTHER THINGS OF VALUE AS A RESULT OF THE OFFENSE.**

26 **(B) EXCEPT AS PROVIDED IN THIS SECTION, DISPOSITION OF PROPERTY**
27 **AFTER FORFEITURE UNDER THIS SUBTITLE SHALL BE SUBJECT TO TITLE 12,**
28 **SUBTITLE 4 OF THIS ARTICLE.**

29 **(C) THE COURT DETERMINATION UNDER § 12-402(C) OF THIS ARTICLE**
30 **SHALL INCLUDE A FINDING THAT THE PROPERTY WAS BEING USED OR WAS TO**
31 **BE USED IN VIOLATION OF THE FINANCIAL CRIMES LAW RATHER THAN THE**
32 **CONTROLLED DANGEROUS SUBSTANCES LAW.**

1 **(D) ORDERS OF FORFEITURE OF PROPERTY UNDER THIS SUBTITLE**
2 **SHALL BE SUBJECT TO THE PROCEDURES IN SUBSECTION (E) OF THIS SECTION**
3 **AND NOT SUBJECT TO § 12-403 OF THIS ARTICLE.**

4 **(E) (1) DISPOSITION OF FORFEITED PROPERTY UNDER THIS**
5 **SUBTITLE SHALL FOLLOW THE PROCEDURES IN THIS SUBSECTION.**

6 **(2) THE GOVERNING BODY HAVING JURISDICTION OVER THE**
7 **PROPERTY SEIZED SHALL SELL PROPERTY FORFEITED UNDER THIS SUBTITLE**
8 **AT PUBLIC AUCTION.**

9 **(3) THE PROCEEDS OF A SALE UNDER THIS SUBSECTION SHALL**
10 **BE DISTRIBUTED AS FOLLOWS:**

11 **(I) FIRST, TO PAY ALL PROPER EXPENSES OF THE**
12 **PROCEEDINGS FOR FORFEITURE AND SALE, INCLUDING EXPENSES OF SEIZURE,**
13 **MAINTENANCE OF CUSTODY, ADVERTISING, AND COURT COSTS;**

14 **(II) SECOND, FOR RESTITUTION AS ORDERED BY THE COURT**
15 **TO THE PERSON OR PERSONS WHOSE IDENTITY WAS STOLEN TO PAY FOR**
16 **IDENTIFIABLE LOSSES RESULTING FROM THE OFFENSE;**

17 **(III) THIRD, FOR RESTITUTION AS ORDERED BY THE COURT**
18 **TO OTHER VICTIMS TO PAY FOR IDENTIFIABLE LOSSES RESULTING FROM THE**
19 **OFFENSE; AND**

20 **(IV) FINALLY, TO THE GENERAL FUND OF THE STATE.**

21 **13-509.**

22 **LIENHOLDERS OF PROPERTY SEIZED UNDER THIS SUBTITLE SHALL HAVE**
23 **THE RIGHTS AND OBLIGATIONS SET FORTH IN TITLE 12, SUBTITLE 5 OF THIS**
24 **ARTICLE.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
26 construed to apply only prospectively and may not be applied or interpreted to have
27 any effect on or application to any offense committed before the effective date of this
28 Act.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 June 1, 2011.